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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/595,448	04/20/2006	Gerard Adam	Q94513	9834

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EXAMINER	
VENNE, DANIEL V	

ART UNIT	PAPER NUMBER
3617	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/595,448	ADAM, GERARD	
	Examiner	Art Unit	
	DANIEL V. VENNE	3617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *13 August 2008*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-7 and 9-11* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-7 and 9-11* is/are rejected.

7)☒ Claim(s) *1,4 and 10* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☒ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *20 April 2006* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

1. An amendment was received from applicant on 8/13/2008.

2. Claims 1, 3, 5-7, 9 and 10 are amended.

3. Claim 8 is canceled.

4. Claim 11 is new.

5. The amendment to the specification is entered.

Specification

6. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: Amended claim 1 now recites "rolling device" and "elevation" instead of 'running device' and 'altitude'; these substitute terms as used in the claims are not indicated in the in original specification filed on 4/20/2006, and therefore the specification is considered to lack proper antecedent basis for these claim limitations. It is suggested that applicant consider amending the specification to correspond with the claim limitations by substituting "rolling device" for 'running device' and "elevation" for 'altitude' in the specification. Similarly, it is suggested that applicant replace the term "relief" with 'elevation' for consistency and clarity purposes throughout the disclosure.

Claim Objections

7. Claims 1, 4 and 10 are objected to because of the following informalities:

In line 2 of claim 4, the phrase "the constant speed" should be replaced with the phrase -- the substantially constant speed -- for consistency and clarity purposes.

In line 3 of claim 10, the phrase “a geographic relief between” should be replaced with the phrase -- geographic elevations for -- for consistency and clarity purposes.

On lines 5 and 6 of claim 10, the phrase "this reading" should be replaced with the phrase -- the geographic elevations --.

On line 10 of claim 1, the phrase “descending section” should be replaced with the phrase -- descending track section -- for consistency and clarity purposes.

On line 17 of claim 1, the phrase “section of descending track” should be replaced with the phrase -- descending track section -- for consistency and clarity purposes.

On line 19 of claim 1, the phrase “having there” should be replaced with just the word -- having -- for consistency and clarity purposes.

On line 25 of claim 1, the phrase “single descending section” should be replaced with the phrase – single descending track section -- for consistency and clarity purposes.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

8. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

9. Amended claims 1-7 and 9-11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

10. Amended claims 1-7 and 9-11 recite (in claim 1 on lines 19 and 20) the phrase "at which gravity is in balance with said rolling resistance of each vehicle added to other resistances including air resistance" is not clear.

11. In amended claim 10, the phrase "making parsimonious use of potential energy" on line 2 is not clear. Depending claims 2-7 and 9-11 are therefore also unclear.

12. In line 28 of amended claim 1, the phrase "in that said transport system it comprises" is awkward and unclear as to what exactly "it" represents. Depending claims 2-7 and 9-11 are therefore also unclear.

Claim Rejections - 35 USC § 102

13. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

14. Claims 1-6 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Rose (US 2593699). Rose discloses a transport system, comprising a transport track [10] formed by at least one rolling rail (rails) [11, 12], several vehicles (trolleys) to be transported, and a rolling device [14] connected to each vehicle and arranged on the rails so as to be able to roll thereon, the vehicle provided with the rolling device having a rolling resistance on the at least one rail, the transport track having several descending track sections [15] having a slope (col. 2, lines 50-53) that is sufficient to overcome the rolling resistance of each vehicle, each vehicle rolling on the descending section by simple gravity; the transport track has a starting point and an arrival point with the arrival

point having an elevation equal to or higher than the starting point, in that between the descending track sections (Fig. 5) is in each case arranged a section of ascending track (Fig. 5) on which each vehicle provided with the rolling device is driven by a driving device (booster conveyor), in that the slope of each descending track section is insufficient to produce a continuous acceleration of the vehicles on the at least one running rail, each vehicle having a substantially constant speed (substantially constant speed can be interpreted to mean that all forces act to produce no acceleration or deceleration which can be considered to mean the same as gravity is in balance with the rolling resistance of each vehicle when other resistances or forces including air resistance is considered), and the transport track has a route along which no vehicle at any point is raised higher than the elevation that the vehicle would have at this point on a transport track having a single descending track section between the starting point and the arrival point, provided with same slope as several descending track sections, and the transport system between the starting point and the arrival point.

Claim Rejections - 35 USC § 103

15. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

16. Claims 1, 6 and 8-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rose (US 2593699). Rose discloses a transport system, comprising a transport track [10] formed by at least one rolling rail (rails) [11, 12], several vehicles (trolleys) to

be transported, and a rolling device [14] connected to each vehicle and arranged on the rails so as to be able to roll thereon, the vehicle provided with the rolling device having a rolling resistance on the at least one rail, the transport track having several descending track sections [15] having a slope (col. 2, lines 50-53) that is sufficient to overcome the rolling resistance of each vehicle, each vehicle rolling on the descending section by simple gravity; the transport track has a starting point and an arrival point with the arrival point having an elevation equal to or higher than the starting point, in that between the descending track sections (Fig. 5) is in each case arranged a section of ascending track (Fig. 5) on which each vehicle provided with the rolling device is driven by a driving device (booster conveyor), in that the slope of each descending track section is insufficient to produce a continuous acceleration of the vehicles on the at least one running rail, each vehicle having a substantially constant speed (substantially constant speed can be interpreted to mean that all forces act to produce no acceleration or deceleration which can be considered to mean the same as gravity is in balance with the rolling resistance of each vehicle when other resistances or forces including air resistance is considered), and the transport track has a route along which no vehicle at any point is raised higher than the elevation that the vehicle would have at this point on a transport track having a single descending track section between the starting point and the arrival point, provided with same slope as several descending track sections, and the transport system between the starting point and the arrival point. Rose does not explicitly disclose the transport system comprises means for balancing speed of two successive vehicles on the descending track sections, so as to maintain a distance

between two successive vehicles. However, Rose does disclose continuous circulation of trolleys by using proper spacing of booster sections and slope in the track (col. 2, lines 28-37), and at least one endless cable (chain) [16] returned freely in a loop (Fig. 1) by pulleys (sprockets) [17, 18] along the transport track and clamps (dogs) [26] arranged on each vehicle to grip the cable (chain) and drive the vehicle (trolley) during transport. It would have been obvious to one of ordinary skill in the art to which the subject matter pertains, to adjust booster sections and slope in the track to effect the continuous transport (by adjusting or balancing trolley speed) of successive multiple trolleys rolling on the rails as a design choice to create the invention as claimed by applicant. The rationale would have been to predictably provide the expected results and desired effect of balancing (adjusting) trolley speed for maintaining a desired distance between successive trolleys rolling on the rails in a continuous fashion. Rose discloses at least one endless cable (chain) [16] returned freely in a loop (Fig. 1) by pulleys (sprockets) [17, 18] along the transport track and clamps (dogs) [26] arranged on each vehicle to grip the cable (chain) and drive the vehicle (trolley) during transport.

17. Claims 2 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rose (US 2593699). Rose discloses all claimed features as indicated above, with the exception of the slope being at least 3/1000 or constant over each descending section. Rose discloses continuous circulation of trolleys by using proper spacing of booster sections and slope in the track (col. 2, lines 28-37). Rose does not specifically indicate the slope being at least 3/1000 or constant over each descending section (although from the figures it does appear that the slope is constant over each descending

section). Nevertheless, it would have been obvious to one of ordinary skill in the art to which the subject matter pertains, to make and adjust a straight line or constant slope in the descending track as a matter of engineering design choice to achieve the desired speed and spacing of successive trolleys in the transport system to create the invention as claimed by applicant. The rationale would have been to adjust track slope and booster sections to optimize speed and spacing of trolleys for the transport system.

18. Claims 4 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rose (US 2593699). Rose discloses all claimed features as indicated above, with the exception of the recited constant speed of at least one vehicle on the descending track sections, or the driving devices driving each vehicle on the ascending track sections at a speed equal to the constant speed of the vehicle on the descending track section. Rose discloses continuous circulation of trolleys by using proper spacing of booster sections and slope in the track (col. 2, lines 28-37). Although Rose is silent on a constant speed of at least on vehicle on a descending track and silent with respect to the driving devices driving a vehicle on the ascending track at a constant speed equal to the constant speed of a vehicle on a descending track section; it would have been obvious to one of ordinary skill in the art to which the subject matter pertains, to adjust booster sections and gradual slope in the track to provide any desired substantially constant speed or to make the driving devices drive each vehicle on the ascending track sections at a speed equal to the same desired substantially constant speed as a matter of design choice to create the invention as claimed by applicant. The rationale would have been

to adjust and optimize speed of successive trolleys in order to achieve a constant and continuous flow of trolleys on descending and ascending track in the transport system.

Allowable Subject Matter

19. Claim 11 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Response to Arguments

20. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

21. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel V. Venne whose telephone number is (571) 272-7947. The examiner can normally be reached between 7:30AM - 4:00PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Samuel J. Morano can be reached on (571) 272-6684. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (In USA or CANADA) or 571-272-1000.

/S. Joseph Morano/
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3617

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